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FISCAL IMPACT STATEMENT

LS 7558

BILL NUMBER: HB 1379

NOTE PREPARED: Mar 20, 2009

BILL AMENDED: Mar 19, 2009

SUBJECT: Unemployment Insurance.

FIRST AUTHOR: Rep. Niezgodski

FIRST SPONSOR: Sen. Kruse

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Reimbursable Employers:* This bill provides that under the extended benefits law reimbursable employers pay only the portion of dollars not reimbursed by the federal government.

Employer Premiums: The bill changes the taxable wage base from \$7,000 to \$10,000. It phases out the current tax rate schedule and provides a new tax rate schedule effective in 2010.

The bill provides for an employer surcharge for 2009 that is equal to 10% of the employer's applicable 2009 contribution rate multiplied by the employer's 2009 taxable wages.

The bill expands the definition of an "employing unit" to include all forms of legal entities.

The bill adds restrictions on an employer's ability to create a new experience account (account) for purposes of reducing the employer's contribution rate.

The bill charges half of the benefits paid to an employer's account if the employer fails to respond to a request by the Department and the employer eventually prevails in the appeal. It provides for a credit to the employer's account equal to the amount of any overpayment recovered.

Seasonal Employment: The bill changes the definition of "seasonal employment" from 26 weeks to 42 weeks. It describes the notice a seasonal worker must receive.

The bill provides for a surcharge on a seasonal employer who does not make a seasonal designation or reduce the total annual wages reported. It specifies that any surcharge amounts paid by an employer shall be credited

to the employer's experience account.

The bill deletes from the law a provision specifying that if a seasonal employer operates its business or its seasonal operation during a period or periods of 26 weeks or more in a calendar year, the employer shall be determined by the Department to have lost its seasonal status with respect to that business or operation effective at the end of the then-current calendar quarter.

The bill expands the types of information a notice of a claim for unemployment benefits must provide.

Benefits & Claims: The bill changes wage credits for computation of a claim from \$9,250 to \$11,000. It provides that for initial claims filed for any week beginning on and after January 1, 2010, an eligible individual who is totally unemployed during each of the first four weeks in the individual's benefit period shall be paid for the week an amount equal to 50% of the individual's prior average weekly wage, where the prior average weekly wage is the total wage credits in the base period divided by 52. It reduces the individual's weekly benefit amount by 10% after week four of the individual's benefit period. The bill also reduces the individual's weekly benefit amount by an additional 10% after week six and by an additional 10% after week eight of the individual's benefit period. It provides that the weekly benefit for an eligible individual who is totally unemployed and participating in department-approved training is not reduced as long as the individual continues to be totally unemployed and participates in the training. The bill also specifies that the weekly benefit amount may not be less than \$50.

The bill provides that as conditions precedent to the payment of benefits to an individual for benefit periods established on and after January 1, 2010: (1) the individual must have established, after the last day of the individual's last base period, wage credits equal to at least 1.5 times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and (2) the individual must have established wage credits in the last two calendar quarters of the individual's base period in a total amount of not less than \$2,500 and an aggregate in the four calendar quarters of the individual's base period of not less than \$4,200. It provides that for a benefit year established on and after January 1, 2010, an individual may not receive benefits in a benefit year unless the individual has earned wage credits exceeding \$1,000 in three separate calendar quarters of the individual's base period.

The bill requires a claimant to serve a waiting period upon filing any initial or additional claim if the claimant has received from any source (other than unemployment insurance benefits) remuneration that exceeds the claimant's maximum weekly benefit in each week for six or more weeks preceding the claim or initial claim, regardless of whether the claimant has previously served a waiting period.

The bill makes severance pay, subpay, bonuses, gifts, and prizes deductible income. It also makes vacation pay deductible income and removes the ability to receive vacation pay after a layoff without reducing benefits.

The bill removes provisions in the law specifying that a person who: (1) accepts an offer of payment offered by an employer to avert or lessen the effect of a layoff or plant closure; and (2) otherwise meets the eligibility requirements for benefits; is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

The bill provides that if an individual knowingly: (1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or (2) fails to disclose or has falsified any fact; that would disqualify the individual for benefits, reduce the individual's benefits, or render

the individual ineligible for benefits or extended benefits, the Department of Workforce Development (Department) shall cancel all of the individual's wage credits established before the period in which the failure to disclose or falsification occurs and any benefits or extended benefits that might otherwise have become payable to the individual, and any benefit rights or extended benefit rights based on those wage credits shall be forfeited.

The bill provides that an individual, group, association, or other entity that knowingly advises or assists an individual in certain failures to disclose information or falsification of information is jointly and severally liable to the department for all overpayments and penalties related to the failure to disclose or falsification.

The bill specifies that if: (1) an otherwise eligible individual fails without good cause (as determined by the Commissioner under rules prescribed by the Commissioner) to attend a job search workshop or a training or retraining course when directed by the Department; and (2) the workshop or course is available at public expense; the individual is not eligible for benefits with respect to any week in which the failure occurred.

The bill provides that, for purposes of the unemployment benefit statutes, the term "effort to secure full-time work" includes submitting at least three separate applications for work each week that the individual is claiming benefits.

The bill provides that work is not considered unsuitable if: (1) during the first four consecutive weeks of claiming benefits, the work pays not less than 80% of the individual's prior weekly wage; (2) during the fifth through the twelfth consecutive weeks of claiming benefits, the work pays not less than 60% of the individual's prior weekly wage; and (3) after 12 consecutive weeks of claiming benefits, the work pays not less than 50% of the individual's prior weekly wage.

It requires that extended benefits be paid for at least 13 weeks after a determination that the state "on" indicator is in effect. The bill also changes the "off" indicator to the maximum allowable under federal law.

Independent Contractor: The bill provides for the sharing of information concerning the classification of individuals as independent contractors among the Department of Labor, the Department of State Revenue, the Department, and the Worker's Compensation Board of Indiana. It provides that certain information pertaining to employee classification shared among the state agencies is confidential and may not be published or open to public inspection.

The bill provides that an officer or employee of a state agency who knowingly or intentionally discloses confidential information concerning any suspected improper classification of an individual commits a Class A misdemeanor.

Misconduct: The bill expands the definition of "gross misconduct" for which an individual's wage credits are canceled. It provides that the employer has the burden of proof that a discharged employee's conduct was gross misconduct, and allows evidence that the employer filled or maintained the position or job held by a discharged employee after the employee's discharge. The bill also provides that it is not a defense that a discharged employee has not been prosecuted or convicted for the conduct. It deletes the requirement that a felony or a Class A misdemeanor may constitute gross misconduct only if the felony or misdemeanor is admitted by the individual or has resulted in a conviction.

Training: The bill requires the Department to provide annually certain training to all administrative law judges, review board members, and other individuals who adjudicate claims. It requires the Department to

regularly monitor the hearings and decisions of individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law, and provides for department disciplinary action up to and including termination for an individual's failure to do so.

Processing Fee: The bill authorizes the Department to charge a reasonable processing fee not to exceed \$2 for records concerning an individual's last known employer that must be disclosed by court order.

Mass Layoff Notice: The bill establishes the form of notice given by an employer in connection with a plant closure or mass layoff. It authorizes the Department to seek injunctive relief against an employer that fails to provide the required notice.

Repealers: The bill repeals: (1) expired employer rate schedules; (2) expired provisions concerning the Skills 2016 Training Program; (3) the definition of "work week" used in a labor contract for purposes of deductible income; (4) a provision concerning payments received under a private unemployment benefit plan; (5) an expired definition of "dependent"; and (6) a provision concerning witness fees.

Effective Date: (Amended) Upon passage; July 1, 2009.

Summary of NET State Impact: The following is a summary of the potential net impact.

Provisions	CY 2009	CY 2010	CY 2011
Tax Base and Rate Schedule Change		\$328.1 M	310.9 M
10% Surcharge	\$51.5 M		
Expanded Definition of Employing Unit		\$20.0 M	\$20.0 M
Failure by Employer to Provide Requested Information		\$27.0 M	\$27.0 M
Seasonal Employer Provisions		\$129.0 M	\$145.0 M
Change in Wage Credits (\$9,250 to \$11,000) and Benefit Calculations		\$139.3 M	\$139.3 M
Additional One-Week Waiting Period per Filing		\$16.0 M	\$16.0 M
Deductible Income Changes		\$139.0 M	\$139.0 M
Failure to Report Deductible Income		\$12.0 M	\$12.0 M
Gross Misconduct		\$20.0 M	\$20.0 M
Requirement of Three Applications per Week		\$12.0 M	\$12.0 M
Total Increase in Fund Revenue or Decrease in Benefits	\$51.5 M	\$842.4 M	\$841.2 M

Explanation of State Expenditures: (Revised) *Reimbursable Employers:* The provision clarifies that reimbursable employers are responsible for benefits not paid by the federal government. The provision should have no fiscal impact.

(Revised) *Seasonal Employment:* The combination of the reduction in benefits and the surcharge for not

being properly classified as a seasonal employer is estimated to raise revenue or reduce benefits by about \$129 M in CY 2010 and \$145 M in CY 2011.

(Revised) *Benefits & Claims*: Benefit calculations are currently based on 5% of the first \$2,000 and 4% of the amount between \$2,000 and \$9,250 of the highest quarter of wage credits. Based on CY 2007 claims data, changing the wage credits from \$9,250 to \$11,000 and changing the benefit calculations to 50% of the prior average weekly wage would save 13.926%. Benefits for CY 2008 were about \$1 B, so the saving would be about \$139.3 M in CY 2010 and CY 2011, assuming a similar experience. The saving would increase if more people claim benefits for a longer period of time.

The bill requires a claimant to serve a one-week waiting period on additional claims if the claimant has received from any source (other than unemployment insurance benefits) remuneration that exceeds the claimant's maximum weekly benefit in each week for six or more weeks preceding the claim or initial claim, regardless of whether the claimant has previously served a waiting period. This provision is estimated to reduce benefits by about \$16 M annually, assuming about 14% of people have multiple claims during the year.

Making severance pay, subpay, bonuses, gifts, prizes, and vacation pay deductible income and removing the ability to receive vacation pay after a layoff without reducing benefits is estimated to reduce benefits by about \$139 M annually. [In CY 2008 about 146,00 claimants had income that would be deductible under the bill. If the average deductible income was about \$400, then the saving would be about \$90 M annually. Also in CY 2008 there were 382,487 unique claimants. Assuming about 21.5% of the claimants has two weeks of vacation available, the saving would be about \$49 M per year. The combination of the two results in an estimated reduction in benefits of \$139 M annually.]

The provision that disqualifies a claimant who knowingly failed to report income that would have reduced benefits is estimated to save approximately \$12 M annually. The impact assumes about 1% fail to report income.

The bill requires a claimant to file three job applications weekly. It also provides that a job is not considered unsuitable if during the first four consecutive weeks of claiming benefits the work pays at least 80% of the individual's prior weekly wage, at least 60% during the fifth through the twelfth consecutive weeks of claiming benefits, and at least 50% after 12 consecutive weeks of claiming benefits. These provisions are estimated to save about \$12 M annually. The impact assumes about 1% fail to submit at least three applications per week. There could be additional savings if this provision decreased the time the claimant received benefits.

(Revised) *Misconduct*: The expansion of the definition of gross misconduct is estimated to save about \$20 M annually. The impact assumes that about 1.5% of filed claims might be disapproved due to gross misconduct.

(Revised) *Independent Contractor*: The bill could reduce administrative expenses by allowing the sharing of information about independent contractors between agencies. The potential savings are unknown.

(Revised) *Training*: The cost of providing annual training to all administrative law judges, review board members, and other individuals who adjudicate claims would depend on the number being trained and the duration of the training. The cost would be paid from the Department's unemployment insurance administrative account, which is federally funded. The cost would probably be under \$10,000 annually. The

cost to the Department to regularly monitor the hearings and decisions of individuals who adjudicate claims to ensure that the hearings and decisions strictly comply with the law would also probably be minor and federally funded.

(Revised) *Mass Layoff Notice*: The requirement that notice be given by an employer in connection with a plant closure or mass layoff on prescribed forms should not have any fiscal impact.

Explanation of State Revenues: (Revised) *Employer Premiums*: The bill would increase the wage base from \$7,000 to \$10,000 and would implement a new rate schedule. For CY 2010, the changes would generate an estimated additional \$328.1 M and an additional \$310.9 M in CY 2011.

The 10% surcharge for CY 2009 is estimated to raise \$51.5 M.

The change in the definition of an "employing unit" to include all forms of legal entities and the restriction on an employer's ability to create a new experience account to reduce their contribution rate is estimated to generate an additional \$20 M annually in premiums. The impact assumes about 10% of the current debit balance employers might try to change their status to acquire the new employer rating of 2.7% instead of their current rate. The effective rate of debit employers is about 7%.

The additional charges for employers that do not provide information requested by the Department and the employer eventually prevails is estimated to raise \$27 M annually.

(Revised) *Independent Contractor*: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

(Revised) *Processing Fee*: The increased revenue from the reasonable processing fee not to exceed \$2 for records concerning an individual's last known employer that must be disclosed by court order is probably small. The Department can currently charge 10 cents per page.

Background: The fund paid \$785.8 M in benefits and received revenue of \$582.1 M in FY 2008. At the end of February 2009, the balance in the fund was about \$23.1 M. As of March 17, 2009, the state had borrowed about \$575.9 M from the federal government to pay unemployment insurance benefits.

Explanation of Local Expenditures: (Revised) *Independent Contractor*: A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

(Revised) *Unemployment Insurance*: The impact on local governments of the various changes to the Unemployment Trust Fund would be as an employer and would probably be minor.

Explanation of Local Revenues: *Independent Contractor:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Workforce Development, Department of Labor.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Scott Sanders, Department of Workforce Development, 317-232-7472.

Fiscal Analyst: Chuck Mayfield, 317-232-4825.